

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communication Commission
Bureau / Office

In the Matter of: }
 }
Amendment of Section 73.202(b), }
Table of Allotments, }
FM Broadcast Stations }
 }
(McFarland , California) }

MB Docket No.:
RM-_____

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Federal Communications Commission
Office of the Secretary

TO: CHIEF, MEDIA BUREAU

PETITION FOR RULEMAKING

Radio Desafio Network, Inc. ("Radio Desafio") (FRN: 0009-3164-98) hereby submits this Petition for Rulemaking to reserve Channel 247A, McFarland, California, for noncommercial use. This Petition is being submitted in response to the *Public Notice*¹ establishing a filing window for reserving existing, vacant commercial FM allotments in accordance with the procedures set forth in the recently-adopted noncommercial FM reservation rules.²

As discussed in more detail below, Channel 247A at McFarland, California, can be reserved for noncommercial use under the procedures and standards set forth in the *Public Notice* and the *NCE Second Report and Order*. In particular, supporting this Petition is an engineering statement, attached hereto as Exhibit One, demonstrating that no reserved channel can be allotted to serve McFarland, and that the proposed reservation would provide significant first and second NCE

¹ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003) (the "Public Notice").

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("NCE Second Report and Order").

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service to the proposed primary service contour of the facility in excess of the 10% threshold established in the *NCE Second Report and Order*. Therefore, Radio Desafio respectfully submits that the reservation of Channel 247A at McFarland, California, will be in the public interest.

I. BACKGROUND

In 1997, Congress granted authority to the Commission to hold auctions to resolve conflicts among mutually-exclusive new and major change applications.³ In response, the Commission determined that NCE entities seeking nonreserved, commercial FM and Television channels would be required to participate in auctions.⁴ However, before this rule came into effect, the U.S. Court of Appeals for the D.C. Circuit vacated the requirement for NCE entities to participate in auctions for nonreserved spectrum.⁵

In response to the *NPR* decision, and based on the subsequent comments submitted in response to a *Second Further Notice of Proposed Rulemaking*⁶, the Commission modified the process by which qualifying NCE entities could reserve noncommercial FM and TV spectrum for noncommercial educational use. Noting that a large number of FM allotments had been made prior to the modification of the noncommercial reservation rules, the Commission indicated that it would

³ *Balanced Budget Act of 1997*, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

⁴ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7429 (2000).

⁵ *NPR v. FCC*, 254 F.3d 226, 229 (D.C.Cir. 2001).

⁶ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833 (2002).

establish a window by which those allotments made prior to August 7, 2000, could be reserved, under certain circumstances.⁷

The Commission established a two-part test to reserve a commercial FM allotment. Specifically, the reservation proponent must demonstrate that:

- (1) maximum class facilities at the proposed allotment site would provide first or second NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons;
- (2) no rule-compliant facility can be authorized at maximum antenna height above average terrain and with maximum effective radiated power on any reserved band channel at four equally-spaced locations with the predicted 60 dBu signal of the maximum same class facility centered on the proposed community of license; and
- (3) no same class rule-compliant facility can be authorized at minimum antenna HAAT and with minimum ERP on any reserved band channel at the city center coordinates for the community of license.⁸

A "rule-compliant" facility would be one that would otherwise comply with the technical and spacing requirements for FM facilities, and that would not cause prohibited interference to existing television stations operating on Channel 6.⁹ By satisfying these requirements, the proponent will have established that the vacant nonreserved FM allotment is qualified to be reserved solely for noncommercial, educational purposes. *Id.*

II. DISCUSSION

As shown in Exhibit One, Channel 247A qualifies for reservation under the Commission's rules. First, more than 22.74% of the population within the proposed service area will be receiving a first NCE service, and 31.42% of the population

⁷ *NCE Second Report and Order*, ¶ 39.

⁸ *Id.* at ¶ 35.

⁹ 47 C.F.R. 73.202(1)(a)(i)

within the proposed service area will be receiving a second NCE service. Both of these figures are substantially higher than the 10% population threshold established by the Commission.

In addition, the Engineering Statement also demonstrates that there are no available reserved FM channels that can be utilized to provide NCE service to McFarland, California. First, the Engineering Statement shows that a minimum Class A facility (0.1 kW at 30 meters height above average terrain ("HAAT")) can not be allotted on any reserved FM channel. Moreover, the Engineering Statement also shows that, among 4 equally-spaced points within the proposed 60 dBu contour, a maximum Class A facility (6.0 kW at 100 meters HAAT) could not be allotted on any reserved FM channel.

Therefore, it is clear from the Engineering Statement both that a rule-complaint reserved channel FM allotment can not be made at McFarland, and "that NCE service is in fact needed" at McFarland,¹⁰ In light of this showing, Radio Desafio respectfully requests that the Commission amend the FM Table of Allotments as follows:

<u>Community, State</u>	<u>Current Channel No.</u>	<u>Proposed Channel No.</u>
McFarland, CA	247A, 275B1	247A*, 275B1

As the President of Radio Desafio Network, Inc., the undersigned hereby certifies under penalty of perjury that the information contained herein is true and correct, and that Radio Desafio will apply for the requested channel if allotted, and if successful in obtaining the construction permit for the facility, will construct the station.

¹⁰ *Id.* ¶ 33.

III. CONCLUSION

WHEREFORE, in light of the foregoing, Radio Desafio Network, Inc. respectfully requests that the Commission grant the petition for rulemaking and reserve Channel 247A at McFarland, California for noncommercial use.

The reservation of the allotment would deliver 23,749 persons their first NCE service, and would best serve the public interest.

Respectfully submitted,

RADIO DESAFIO NETWORK, INC.

By: 

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(661) 847-1065

November 21, 2003

Engineering Statement
In response to MMB Window Closing November 21, 2003
Providing for Conversion of
Commercial Allotments to Noncommercial Allotments

McFarland, CA 247A

Robert Moore
November 19, 2003

Public Notice DA 03-2990¹ and Report and Order 18 FCC Rcd 6691² state that three distinct engineering criteria must be satisfied to qualify an allotment. These must demonstrate 1) need for an additional NCE service, 2) unsuitability of any NCE channel at the site at the proposed city of license and 3) unsuitability of any NCE channel at four points near the edge of the protected contour surrounding the city of license. These will be demonstrated in order.

1) Need for Additional NCE Service – NCE Second Report and Order ¶34

The graphic below illustrates the 60 dBu coverage of existing NCE authorizations (shown in black) that intersect the 60 dBu contour of the proposed allotment when it is evaluated at its allotment site (shown in red). The graphic demonstrates that 54.16% (56,556 people) of the population covered by the allotment would be newly served with first or second NCE service NCE programming by conversion of the channel to NCE status. Of these 22.74% would receive their first NCE service (shown in red) and 31.42% would receive their second NCE service (shown in green). The remaining population (shown in black) is already served by two NCE stations. This coverage significantly exceeds the 10% and 2,000 people specified in the R&O.

2) City of License Site – NCE Second Report and Order ¶35b

The city coordinates are given at <http://www.fcc.gov/mb/audio/bickel/atlas2.html> as MCFARLAND, CA Latitude: N 35 40 40 Longitude: W 119 13 41. A **minimum class A** facility (0.1 kW at 30 m HAAT) was evaluated at each NCE channel. The entries *IN* and *OUT* represent the incoming and outgoing contour overlap with each specified station, or spacing, as in FMCONT output, is given in km. Only negative results, indicating prohibited contour overlap or spacing violation, are displayed. The existence of even one negative value for a channel shows that that channel is not available at the specified site with the specified facilities. Note that all stations in the CDBS are included here, whether authorized or not, since most, if not all, are included in closed Mx groups, so there is no longer an opportunity for new entrants to file. This table shows that all the NCE channels are unavailable at this site for the specified facility.

3) Cardinal Sites – NCE Second Report and Order ¶35a

Availability was also evaluated at 27 km (28 km class contour distance - 1 km) of from the city of license site at azimuths of 0, 90, 180 and 270 degrees. In these evaluations, a **class maximum facility** was utilized. The entries are interpreted as in 2). These tables show that no NCE channels are available at these sites for the specified facility.

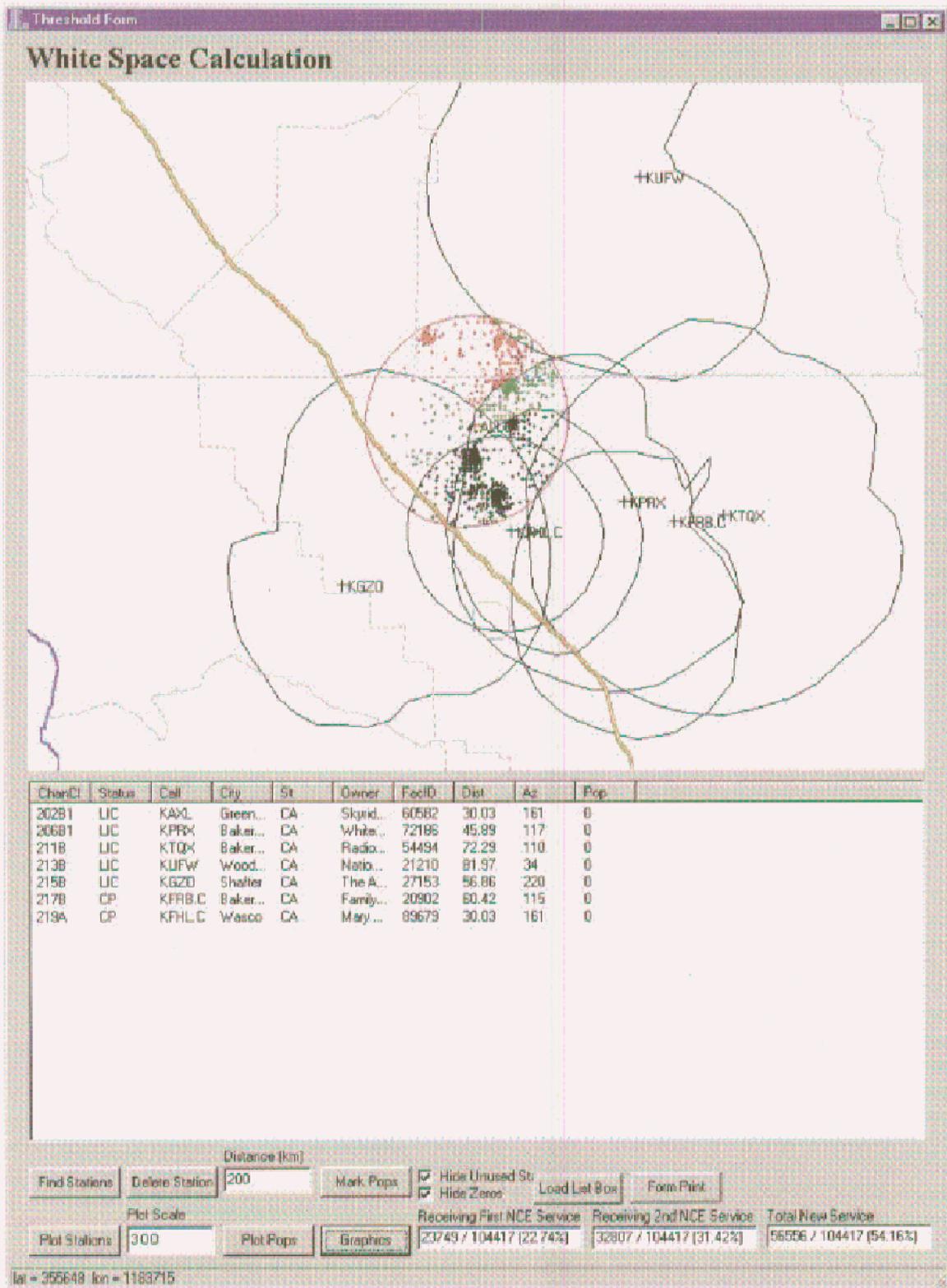
Conclusion:

The criterion specified by the Commission is satisfied by this allocation and it can be considered for conversion to an NCE allocation.

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² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("NCE Second Report and Order").

1) Need for Additional NCE Service



2) City of License Site

Showing of available NCE channels at Mcfarland, CA

Chan	Call	*IN*	*OUT*	Margin	Chan	Call	*IN*	*OUT*	Margin
201	KAXL	-24.2	-9.4		211	CP208		-13.4	
202	KAXL	-70.1	-20.2		212	KTQX	-69.2	-9.1	
203	KAXL	-24.2	-9.4		212	KTQX	-21.9		
	KQKL	-54.5				KUFW	-11.3		
	KPRX		-11.1		213	KUFW	-58.9		
204	KAXL		-2.0		214	KUFW	-11.3		
	AP204	-24.2				KPFK	-3.8		
	KPRX		-11.1			KGZO	-33.3	-7.0	
205	KAXL		-2.0		215	KGZO	-82.2	-21.2	
	990407	-20.8			216	KGZO	-33.3	-7.0	
	KDUV	-21.9				KFRB.C	-6.0		
	KPRX	-38.9	-18.4		217	KFRB	-35.8		
	CP208		-13.4			KFRB.C	-49.2	-0.6	
206	KPRX	-85.6	-29.0			KSJV	-9.5		
	CP208		-13.4		218	KFRB.C	-6.0		
207	KPRX	-38.9	-18.4			KSJV	-62.5		
	CP208	-40.2	-24.1			KFHL.C	-15.6	-4.4	
208	KPRX		-11.1		219	KSJV	-9.5		
	CP208	-87.3	-39.2			KFHL.C	-59.6	-15.1	
209	KPRX		-11.1		220	KFHL.C	-15.6	-4.4	
	CP208	-40.2	-24.1			KPSLFM	-21.0	-5.9	-34.7
	KARM	-14.9							
210	CP208		-13.4						
	990907	-3.4							
	KTQX	-21.9							

3) Cardinal Sites:

0 degrees:

Showing of available NCE channels at Mcfarland, CA

Chan	Call	*IN*	*OUT*	Margin	Chan	Call	*IN*	*OUT*	Margin
201	KFCF	-36.2	-17.3		211	CP208		-5.5	
	KAXL	-20.2	-18.7			990907	-7.5	-9.3	
202	KAXL	-66.1	-61.5			KTQX	-69.6	-55.3	
	KQKL	-41.7	-32.1			KCBX	-5.6		
203	KAXL	-20.2	-18.7			KUFW		-5.5	
	KQKL	-101.2	-74.8		212	KTQX	-22.4	-11.0	
204	KQKL	-41.7	-32.1			KUFW	-56.9	-44.1	
	AP204	-36.7	-34.2		213	KUFW	-104.4	-87.5	
	AP204		-0.9		214	KUFW	-56.9	-44.1	
	KDUV	-29.2	-24.6			KPFK	-4.9		
205	990407	-30.5	-16.6			KFRP.C	-19.7	-21.3	
	KDUV	-74.7	-68.0			KGZO	-35.5	-22.3	
	KPRX	-34.0	-26.6		215	KUFW		-5.5	
	CP208		-5.5			KGZO	-84.4	-65.0	
206	KDUV	-29.2	-24.6		216	KUFW		-5.5	
	KPRX	-80.4	-70.5			KGZO	-35.5	-22.3	
	CP208		-5.5			KLKY.C	-46.4	-15.6	
207	KPRX	-34.0	-26.6		217	KFRB	-28.4	-35.8	
	KLFFFM	-6.4				KFRB.C	-32.3	-37.5	
	KLFFFM	-6.8				KSJV	-58.1	-37.5	
	KVER	-35.9	-17.0		218	KSJV	-111.2	-80.4	
	CP208	-55.9	-49.3			KFHL.C	-11.6	-13.6	
208	CP208	-109.9	-91.9		219	KSJV	-58.1	-37.5	
	KARM	-16.5	-8.1			KFHL.C	-55.6	-56.4	
209	CP208	-55.9	-49.3			AP222	-15.9		
	KARM	-63.8	-51.0			AP222	-23.7	-0.8	
	990907	-7.5	-9.3		220	KFHL.C	-11.6	-13.6	
210	CP208		-5.5			KZFO.C		-2.4	
	KARM	-16.5	-8.1			KPSLFM	-16.9	-14.5	-14.8
	990907	-47.8	-52.0			KZFO		-1.5	
	KTQX	-22.4	-11.0			AP221	-1.4	-15.4	
	KUFW		-5.5			AP222	-23.7	-0.8	

90 degrees:

Showing of available NCE channels at Mcfarland, CA

Chan	Call	*IN*	*OUT*	Margin	Chan	Call	*IN*	*OUT*	Margin
201	KCRY	-7.1			210	KARM	-6.7	-2.9	
	KFCF	-16.5	-3.7			990907	-16.5	-31.3	
	KAXL	-51.1	-49.4			KTQX	-51.8	-35.1	
202	KAXL	-103.4	-92.6		211	KTQX	-99.1	-79.9	
	KQKL	-16.6	-11.3		212	KTQX	-51.8	-35.1	
203	KAXL	-51.1	-49.4			KUFW	-52.9	-45.9	
	KQKL	-76.2	-55.0		213	KTQX		-13.2	
	AP204	-21.9	-13.1			KUFW	-100.6	-89.2	
	KPRX	-15.8	-22.3		214	KTQX		-13.2	
204	KAXL	-1.0				KUFW	-52.9	-45.9	
	KQKL	-16.6	-11.3			KPFFK	-43.5		
	AP204	-64.9	-58.0			KFRP.C		-3.5	
	AP204	-23.8	-22.1			KGZO	-42.7	-32.2	
	990407	-10.4			215	KGZO	-91.6	-75.5	
	KDUV	-19.6	-21.8		216	KGZO	-42.7	-32.2	
	KPRX	-15.8	-22.3			KLTV.C	-23.2		
205	KAXL	-1.0				KFRB	-20.3	-19.4	
	AP204	-21.9	-13.1			KFRB.C	-23.1	-21.0	
	990407	-22.8	-18.3		217	KFRB	-56.5	-65.4	
	KDUV	-63.1	-65.1			KFRB.C	-60.5	-67.1	
	KPRX	-71.9	-69.5			KSJV	-48.0	-32.1	
206	KDUV	-19.6	-21.8		218	KFRB	-20.3	-19.4	
	KPRX	-118.2	-112.4			KFRB.C	-23.1	-21.0	
207	KPRX	-71.9	-69.5			KSJV	-101.1	-75.5	
	KVPR	-16.1	-3.4			KFHL.C	-33.1	-39.2	
	CP208	-44.5	-45.5			KPSLFM	-14.2	-10.6	-9.4
208	KPRX	-15.8	-22.3		219	KSJV	-48.0	-32.1	
	CP208	-90.3	-89.0			KFHL.C	-78.0	-82.3	
	KARM	-6.7	-2.9			KPSLFM	-14.2	-10.6	-9.4
	KTQX		-13.2		220	KFHL.C	-33.1	-39.2	
209	KPRX	-15.8	-22.3			KWTD.C	-10.9		
	CP208	-44.5	-45.5			KPSLFM	-55.5	-57.9	-50.4
	KHFR.C	-4.2	-0.0						
	KARM	-54.0	-46.3						
	KTQX		-13.2						

180 degrees:

Showing of available NCE channels at Mcfarland, CA

Latitude 352604 Longitude 1191341 ERP(Kw) 6.000 HAAT(m) 100 COR AMSL(m) 210									
Chan	Call	*IN*	*OUT*	Margin	Chan	Call	*IN*	*OUT*	Margin
201	980414	-18.4			211	CP208	-3.1	-10.6	
	KCRY	-10.2	-5.5			KTOX	-95.2	-80.0	
	ALLO	-15.6				KCBX	-13.3	-5.7	
	KAXL	-80.3	-77.1		212	KTOX	-47.9	-36.4	
202	KAXL	-130.3	-119.8			KUFW	-4.7		
203	KAXL	-80.3	-77.1			KGZO		-12.2	
	KL VH	-4.5	-0.8		213	KUFW	-52.4	-36.3	
	KQKL	-48.7	-21.5			KGZO		-12.2	
	AP204	-8.5	-7.4		214	KUFW	-4.7		
	KPRX		-19.3			KPFK	-47.2	-0.6	
204	KAXL	-30.9	-34.2			KFRP.C		-0.0	
	AP204	-48.9	-51.0			KGZO	-68.7	-56.3	
	AP204		-20.5		215	KGZO	-117.6	-99.0	
	990407	-7.0	-1.7		216	KGZO	-68.7	-56.3	
	KPRX		-19.3			KFRB	-33.0	-29.6	
205	KAXL	-30.9	-34.2			KFRB.C	-43.1	-37.3	
	AP204	-8.5	-7.4			KFHL.C	-29.9	-25.2	
	990407	-51.6	-44.4		217	KGZO		-12.2	
	KDUV	-14.9	-12.4			KFRB	-76.8	-73.2	
	KPRX	-65.0	-55.3			KFRB.C	-88.5	-80.9	
	CP208	-3.1	-10.6			KSJV	-0.2		
206	990407	-7.0	-1.7			KFHL.C	-29.9	-25.2	
	KPRX	-111.8	-99.4		218	KGZO		-12.2	
	CP208	-3.1	-10.6			KFRB	-33.0	-29.6	
207	KPRX	-65.0	-55.3			KFRB.C	-43.1	-37.3	
	KLFFFM	-14.1	-5.7			KSJV	-53.2	-22.8	
	KLFFFM	-15.6	-6.0			KFHL.C	-65.1	-68.1	
	CP208	-56.5	-53.6			KPSLFM		-6.6	
208	KPRX		-19.3		219	KSJV	-0.2		
	CP208	-102.7	-96.3			KFHL.C	-109.4	-110.8	
209	KPRX		-19.3			KPSLFM		-6.6	
	CP208	-56.5	-53.6		220	KFHL.C	-65.1	-68.1	
	KHFR.C	-35.8	-28.2			KCSBFM	-29.0	-17.2	
	KARM	-5.5				KPSLFM	-46.8	-42.6	-40.7
210	CP208	-3.1	-10.6			KMYXFM		-0.5	
	990907	-4.4	-18.7						
	KTOX	-47.9	-36.4						

270 degrees:

Showing of available NCE channels at Mcfarland, CA

Chan	Call	*IN*	*OUT*	Margin				
	Latitude 354040	Longitude 1193135	ERP(Kw) 6.000	HAAT(m) 100	COR	AMSL(m) 173		
201	980414	-15.4			990907	-8.0	-13.7	
	KFCF	-13.0			KTQX	-67.5	-52.1	
	KAXL	-19.6	-24.6		KCBX	-32.3	-23.6	
202	KAXL	-54.9	-67.7		KTQX	-20.3	-9.1	
	KDKL	-10.1	-2.3	212	KUFW	-20.6	-9.0	
	KQKL	-20.2	-10.9		KGZO		-14.9	
203	KAXL	-19.6	-24.6		213	KUFW	-68.1	-51.8
	KLVH	-23.7	-18.8			KGZO		-14.9
	KQKL	-78.6	-53.6		214	KUFW	-20.6	-9.0
204	KQKL	-20.2	-10.9			KPFK	-9.1	
	AP204	-19.4	-21.9			KFRP.C	-26.7	-32.6
	990407	-20.1	-9.7			KGZO	-69.3	-55.0
205	990407	-69.0	-52.8		215	KGZO	-118.2	-98.1
	KDUV	-39.6	-33.1		216	KGZO	-69.3	-55.0
	KPRX	-34.6	-27.7			KLVI.C	-24.2	
	CP208	-24.1	-45.3			KFRB.C	-7.0	-3.2
206	990407	-20.1	-9.7		217	KGZO		-14.9
	KPRX	-81.0	-70.7			KFRB	-40.2	-39.6
	CP208	-24.1	-45.3			KFRB.C	-51.2	-46.3
207	KPRX	-34.6	-27.7			KSJV	-30.2	-8.3
	KLFFFM	-33.2	-23.7		218	KGZO		-14.9
	KLFFFM	-34.6	-23.9			KFRB.C	-7.0	-3.2
	KVPR	-12.8				KSJV	-84.2	-51.0
	CP208	-96.2	-85.9			KFHL.C	-31.1	-31.2
208	CP208	-155.1	-128.9		219	KSJV	-30.2	-8.3
209	CP208	-96.2	-85.9			KBDH	-17.7	-1.1
	KHFR.C	-25.4	-21.8			KFHL.C	-74.2	-74.2
	KARM	-36.1	-21.5			AP222	-6.2	
	990907	-8.0	-13.7		220	KFHL.C	-31.1	-31.2
210	CP208	-24.1	-45.3			KCSBFM	-13.5	-1.0
	990907	-42.5	-56.5			KPSLFM	-17.1	-15.4
	KTQX	-20.3	-9.1					-10.5
211	CP208	-24.1	-45.3					